

SERVICE DATE - MAY 16, 2003

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34316 (Sub-No. 1)

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY–TRACKAGE
RIGHTS EXEMPTION–UNION PACIFIC RAILROAD COMPANY

Decided: May 9, 2003

By petition filed on February 28, 2003, The Burlington Northern and Santa Fe Railway Company (BNSF) requests that we partially revoke the class exemption to permit the temporary trackage rights arrangement between BNSF and Union Pacific Railroad Company (UP), exempted in The Burlington Northern and Santa Fe Railway Company–Trackage Rights Exemption–Union Pacific Railroad Company, STB Finance Docket No. 34316 (STB served Mar. 12, 2003), to expire upon completion of the construction¹ of BNSF's rail line between Kamey and Seadrift, TX. We will grant the petition.

BACKGROUND

The temporary trackage rights exempted in STB Finance Docket No. 34316 are over UP's Port Lavaca Subdivision from milepost 15.4 to milepost 14.2 and from milepost 6.95 to milepost 6.0. These segments are on either side of a 7.25-mile portion of UP's Port Lavaca Subdivision over which BNSF was granted an exemption for overhead trackage rights in the same notice. This petition does not involve those overhead trackage rights. The purpose of the temporary trackage rights is to allow BNSF access to the rail line it is constructing. BNSF maintains that, without approval of its petition to partially revoke the class exemption with respect to the temporary trackage rights, it is unlikely that any other feasible arrangement can be reached to allow it to operate over UP's line.

DISCUSSION AND CONCLUSIONS

Although BNSF and UP have expressly agreed on the term of the proposed temporary trackage rights arrangement, trackage rights approved under the class exemption normally remain

¹ BNSF was granted authority to construct and operate the railroad line in The Burlington Northern and Santa Fe Railway Company–Construction and Operation Exemption–Seadrift and Kamey, TX, STB Finance Docket No. 34003 (STB served Jan. 25, 2002). BNSF estimates that the construction will be completed before the end of June 2003.

effective indefinitely regardless of any durational contract provisions. Trackage rights exemptions have been granted for a limited term rather than in perpetuity in situations such as these. See The Burlington Northern and Santa Fe Railway Company–Trackage Rights Exemption–Union Pacific Railroad Company, STB Finance Docket No. 34194 (Sub-No. 1) (STB served May 14, 2002).

Under 49 U.S.C. 10502, we may exempt a person, class of persons, or a transaction or service, in whole or in part, when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either the transaction or service is of limited scope, or regulation is not necessary to protect shippers from the abuse of market power.

BNSF's temporary trackage rights have already been authorized under the class exemption at 49 CFR 1180.2(d)(7). See Railroad Consolidation Procedures, 1 I.C.C.2d 270 (1985). Limiting the term of the trackage rights is consistent with the limited scope of the transaction previously exempted and will have no adverse impact on shippers on the line as the temporary trackage rights are designed solely to facilitate the construction of BNSF's rail line. Therefore, we will grant the petition and permit the temporary portion of the trackage rights arrangement exempted in STB Finance Docket No. 34316 to expire upon completion of the construction of BNSF's rail line between Kamey and Seadrift.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The petition for partial revocation is granted.
2. Under 49 U.S.C. 10502, we exempt the temporary trackage rights described in STB Finance Docket No. 34316, as discussed above, to permit them to expire upon completion of the construction of BNSF's rail line between Kamey and Seadrift.
3. Notice will be published in the Federal Register on May 16, 2003.
4. This decision is effective on June 15, 2003.

5. Petitions to stay must be filed by May 27, 2003. Petitions to reopen must be filed by June 5, 2003.

By the Board, Chairman Nober and Commissioner Morgan.

Vernon A. Williams
Secretary